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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,395	12/20/2001	Alexander Goetz	ASDI-004/00US	3712

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EXAMINER

NGUYEN, SANG H

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/023,395	Applicant(s) GOETZ ET AL.	
	Examiner sang nguyen	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 15-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 31 and 32 is/are rejected.
- 7) ☒ Claim(s) 11-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04/02 & 10/02</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I (claims 1-14 and 31-32) filed on 10/08/03 is acknowledged.

Applicant should canceled non-elected claims 15-30.

Claim Objections

Claims 31-32 are unclear because claims 31-32 are method claim or device claim. If claims 31-32 are method claim, applicant should provide the following **"the steps of comprising:"** performing in the method claim and not steps **"means for"**. The language **"means for"** uses or shows only in device/apparatus claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper independent method/device claim form, or rewrite the method/device claim(s) in independent form.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Art Unit: 2877

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 31-32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-12 and 22 of U.S. Patent No. 6,667,802. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of elements in apparatus and method claims 1 and 31 of the application are inherent in the method claims 10 and 21 for example, all of function elements of a method claim 1 in present invention application is similar to function elements of a method claim 10 of Patent No. 6,667,802.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10, 14, and 31-32 rejected under 35 U.S.C. 102(b) as being anticipated by (U.S. Patent No. 6,373,520).

Regarding claims 1, 10, 14, and 31-32; Cadiieux et al discloses a method of identifying non-conforming groups of items within a package, the steps of the method comprising:

- obtaining the package (2 of figure 1) having a plurality of groups of items considered to be plurality of cigarette packs (col.3 lines 27-28);

Art Unit: 2877

- obtaining a reference signal considered to be electrical signal from camera (22, 24, 26 of figure 2) to store in a processor (42 of figure 2) is being a predetermined pixel value corresponding to a package having conforming groups of items (col. 8 lines 10-12 and 19-21);
- obtaining a signal corresponding to each of the plurality of groups of items (2 of figure 2) in the package is non-conforming (col.5 lines 17-27 and col.8 lines 13-18);
- comparing the signal corresponding to each of the plurality of non-conforming groups of items with the reference signal/predetermined signal value of conforming groups of items of packages (col.8 lines 22-37);
- determining whether any of the plurality of groups of items is non-conforming by the processor controller (42 of figure 2 and col.5 lines 15-27);
- segregating or separating the package based on whether the package contain a non-conforming group of items (col.8 lines 38-62) by an ejection station (10 of figure 1). See figures 1-2 and 4-6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cadieux et al (U.S. Patent No. 6,373,520) in view of White (U.S. Patent No. 4,972,494), Bell et al (U.S. Patent No. 4,266,674), Neri (U.S. Patent No. 5,013,905), and Miller (U.S. Patent No. 5,366,096).

Regarding claim 2; Cadieux et al discloses the reference signal is a known value (col.8 lines 20-21) input by a user.

Regarding claim 3; Cadieux et al discloses all of features in claimed invention except for performing a calibration run on a package containing conforming groups of items. However, White teaches that it is known in the art to provide performing a calibration run on a package (18 of figure 1 and col.16 lines 56-65) containing conforming groups of items [cigarettes]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify method of identifying non-conforming groups of items within a package of Cadieux et al with performing a calibration run on a package containing conforming groups of items as taught by White for the purpose of calibration of the images so that reliable measurements can be made of all the package various package elements (col.14 lines 5-8).

Regarding claims 4 and 5; Cadieux et al discloses all of features in claimed invention except for the plurality of groups of items comprises aligning individual columns and rows of items in the package. However, Bell et al teaches that it is known in the art to provide the plurality of groups of items comprises aligning individual columns and rows of items in the package (see figure 2 and col.4 lines 43-52). It would

Art Unit: 2877

have been obvious to one having ordinary skill in the art at the time the invention was made to modify method of identifying non-conforming groups of items within a package of Cadieux et al with for the plurality of groups of items comprises aligning individual columns and rows of items in the package as taught by Bell et al for the purpose of inspecting a group of cigarette in the package.

Regarding claim 6; Cadieux et al discloses all of features in claimed invention except for the plurality of groups of items are arranged in a circular pattern. However, Neri teaches that it is known in the art at to provide for the plurality of groups of items [cigarettes 10 of figure 1] are arranged in a circular pattern (4, 5 of figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify method of identifying non-conforming groups of items within a package of Cadieux et al with a circular pattern as taught by Neri for the purpose of inspecting and determining the resulted in comparison acceptance or rejection cigarette.

Regarding claim 7; Cadieux et al discloses all of features in claimed invention except for the plurality of groups of items are randomly placed within the package. However, Miller teaches that it is known in the art to provide the plurality of groups of items are randomly placed within the package (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify method of identifying non-conforming groups of items within a package of Cadieux et al with the plurality of groups of items are randomly placed within the package as taught by Miller for the purpose of inspecting aligning cylindrical objects from a random stacked order in cigarette package.

Regarding claims 8 and 9; Cadieux et al discloses all of features in claimed invention except for a reflectance measurements of the reference signal and infrared spectrographic analysis of the signal corresponding to each of the plurality of groups of items. However, White teaches that a reflectance measurements of the reference signal and infrared spectrographic analysis of the signal corresponding to each of the plurality of groups of items (col.7 lines 51-68 and figures 1-2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify method of identifying non-conforming groups of items within a package of Cadieux et al with a reflectance measurements of the reference signal and infrared spectrographic analysis of the signal corresponding to each of the plurality of groups of items as taught by White for the purpose of calibration of the images so that reliable measurements can be made of all the package various package elements.

Allowable Subject Matter

Claim 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record, taken alone or in combination, fails discloses or render obvious a method of identifying non-conforming groups of items within a package comprising all the specific elements with the specific combination including of determining whether any of the plurality of groups items is non-conforming comprises computing an average reflectance signal based on the reflectance signals

Art Unit: 2877

corresponding to each of the plurality of groups of items, and comparing the average reflectance signal with the reference reflectance signal in set forth limitation of claim 11 in combination with rest of the limitation of independent claims 1 and 31.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yuyama et al (6,324,253) discloses tablet inspection apparatus; Neubauer et al (6,378,572) discloses image processing system for inspecting tablet in slab filler packaging machines; Wada et al (4,636,849) discloses apparatus and method for inspecting solid drugs; Edamatsu (4,446,481) discloses automatic product inspection system; Suzuki et al (JP 11 178 894) discloses method and device for inspecting appearance of tablet and blister sheet packer; Suzuki et al (JP 11 118 721) discloses method and device for inspecting appearance of tablet; Doi (JP 10 033 638) discloses inspection device and method for medicine in housing body or Sasaki et al (JP 11 021 392).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Nguyen whose telephone number is (571) 272-2425. The examiner can normally be reached on 9:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank Font can be reached on (571) 272-2415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2877

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SN

Sang Nguyen/SN

March 26, 2004



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